



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI,
L.L.P.
20333 SH 249 6th Floor
HOUSTON TX 77070

MAILED

MAR 26 2010

OFFICE OF PETITIONS

In re Application of	:	
Roundy et al.	:	ON REQUEST FOR
Patent Number: 7,561,536	:	RECONSIDERATION OF
Issue Date: 07/14/2009	:	PATENT TERM ADJUSTMENT
Application No. 10/694622	:	
Filing or 371(c) Date: 10/27/2003	:	
Attorney Docket Number: 199-0065US	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed July 21, 2009. Patentee requests that the determination of patent term adjustment under 35 U.S.C. 154(b) at the time of mailing of the notice of allowance be corrected from nine hundred sixty (960) days to nine hundred sixty-two (962) days.

The application for patent term adjustment is **DISMISSED**.

On July 14, 2009, the above-identified application matured into U.S. Patent No. 7,561,536, with a patent term adjustment of 960 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 CFR 1.705(d).

Patentees request that the patent term adjustment ("PTA") be adjusted to 962 days. Patentees believe that they should not have been assessed two (2) days of delay relative to the payment of the issue fee. Patentees acknowledge that the date three months after the mailing of the Notice of Allowance is June 6, 2009, and that the Issue Fee in response to the Notice of Allowance was filed on June 8, 2009. However, Patentees aver that the issue fee was timely because the time period for reply ended on a Saturday, Sunday or Federal Holiday, in which instance, Patentees provide, the reply is timely if filed on the next succeeding business day. Patentees also cite to 35 U.S.C. § 21(b), which provides in relevant part, that when the last day for paying any fee falls on a Saturday, Sunday or Federal Holiday within the District of Columbia, the fee may be paid on the next succeeding or secular or business day. Patentees also refer to the Notice of Allowance which states that Fees are Due on June 8, 2009.

Regarding the delay of two (2) days attributed to Applicant under 37 CFR 1.704(b), for filing the issue fee on June 8, 2009, Patentee's attention is directed to 37 CFR 1.703(f), which provides that

“[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation” of patent term adjustment. That is, while the date indicated on any certificate of mailing or transmission under § 1.8 will continue to be taken into account in determining timeliness, the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation. Applicant may wish to consider the use of the “Express Mail Post Office to Addressee” service of the United States Postal Service (§ 1.10) or facsimile transmission (§ 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. (Emphasis supplied). *See also*, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*; *Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

In accordance with 37 CFR 1.703(f), the Office properly used June 8, 2009, the filing date of the issue fee, in calculating the patent term adjustment. Accordingly, Patentees’ argument on request for reconsideration of patent term adjustment is not found persuasive.

In view thereof, no adjustment to the patent term will be made.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods, at (571) 272-3232.



Anthony Knight
Supervisor
Office of Petitions